STATE OF MICHIGAN

COURT OF APPEALS

OLD UNITED CASUALTY COMPANY,

Plaintiff/Counter-Defendant-Appellant,

v

JEFF PURSEY,

Defendant/Counter-Plaintiff-Appellee.

UNPUBLISHED
January 19, 2006

No. 254851
Oakland Circuit Court
LC No. 2003-050077-CZ

Before: O'Connell, P.J., and Smolenski and Talbot, JJ.

PER CURIAM

Plaintiff insurer appeals as of right from the trial court's order requiring the insurer to issue a check to defendant insured naming only defendant and his attorney as payee, and specifically excluding defendant's secured creditor, National City Bank, as a payee. Plaintiff also appeals the trial court's denial of its motion to add the bank to the proceedings. We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E). This case arose when defendant claimed that his boat, which he insured with plaintiff, was stolen, and that its flotsam later drifted ashore, evidencing its total loss.

In its declaratory judgment action, the insurer requested a rescission of the insurance policy, alleging fraud and material misrepresentations in defendant's application for insurance. Defendant counterclaimed that his insurer was wrongfully withholding insurance proceeds. Eventually the parties submitted the counterclaim to facilitation, and an agreement was reached. However, when reduced to writing, the agreement erroneously required defendant (the boat owner) to pay plaintiff (the insurer) $32,500 for the total loss of the boat. Although the insurer issued a check for this amount to defendant as the parties actually agreed, the check listed National City Bank, the boat's lienholder, and defendant's attorney as payees. Defendant then moved the trial court to enforce the settlement agreement, which, according to defendant, meant issuing a check listing only him and his attorney as payees.

At the hearing on the motion, the insurer explained its potential liability if it released insurance proceeds to defendant without the bank's knowledge and approval, especially since the bank was listed as a lienholder on the policy's declaration sheet. The insurer also explained that the lien on the boat was actually twice the settlement amount. The insurer moved to add National City to the suit so that everyone's rights would be protected. The trial court denied the

motion and ordered the insurer to re-issue a check with the insured as the only payee. To protect the insurer from further action by the bank, the trial court ordered the insured to prepare and sign an indemnity agreement holding the insurer harmless in exchange for the newly issued check. Because the court was not legally justified in ordering the insurer to issue a check that was tailor-made for defendant's questionable purposes, and because correct collections procedures, including adding National City as an interested party, would have protected the secured creditor and the insurer from a second suit, we reverse.

We first analyze defendant's argument that the settlement agreement unambiguously requires the insurer to pay defendant $32,500, irrespective of any lien on the boat or its insurance proceeds. A settlement agreement is enforceable as a contract and is governed by the legal principles applicable to the construction and interpretation of contracts. *Michigan Mut Ins Co v Indiana Ins Co*, 247 Mich App 480, 484; 637 NW2d 232 (2001). Although we agree that the settlement agreement binds the insurer to its concession of liability and exposes it to a judgment for $32,500, we will not infer from the scant documentation that the insurer unconditionally promised to issue a negotiable instrument solely payable to defendant. Contrary to defendant's arguments, the written settlement agreement does not say anything about the method of payment or contain a pact that the insurer will keep defendant's secured debtor ignorant and powerless to execute its rights. Rather, the cursory written agreement mixes up the parties and requires "defendant(s)" to pay "plaintiff(s)" $32,500. Nothing more is mentioned, and certainly the method of payment and number of payees was not specified. In fact, defendant's stated preference of including his attorney as payee on the second check belies any alleged intent to make defendant the only named payee, and indicates an understanding between the parties that secondary interests were never intended to be disregarded.

Notwithstanding this lack of clear intent, the trial court did not execute the judgment pursuant to MCR 2.621, but expedited resolution by ordering the insurer to issue a negotiable instrument naming only defendant (and his attorney) as payee. The court compounded this error by denying the insurer leave to amend its pleadings to add National City as a counter-plaintiff. "Leave shall be freely given when justice so requires." MCR 2.118(A)(2). Nevertheless, the trial court failed to state its reason for denying the insurer's motion to amend, contrary to *Dampier v Wayne Co*, 233 Mich App 714, 734; 592 NW2d 809 (1999). Adding the bank would certainly "promote the convenient administration of justice," MCR 2.206(A)(1)(b), and also furthers the interests of justice by settling what duty, if any, the insurer owes National City regarding the proper disposition of the insurance proceeds. See *Williams v Buchanan Mfg Co*, 102 Mich 49, 51; 60 NW 308 (1894). Therefore, under the circumstances, the trial court erred in denying the insurer's motion to include National City in the suit so that the insurer could protect itself from subsequent liability and the bank could defend its interest in the insurance proceeds.

Reversed.

/s/ Peter D. O'Connell
/s/ Michael R. Smolenski
/s/ Michael J. Talbot